

AMENDED IN ASSEMBLY JUNE 3, 2004

AMENDED IN SENATE MAY 11, 2004

AMENDED IN SENATE APRIL 26, 2004

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1451

Introduced by Senator Figueroa

February 19, 2004

An act to add Title 1.81.4 (commencing with Section 1798.98) to Part 4 of Division 3 of the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1451, as amended, Figueroa. Privacy guarantees: contracts.

Existing law requires a business to ensure the privacy of a customer's records and personal information, as defined. Existing law also prohibits a person or entity from publicly posting or displaying an individual's social security number. Existing federal law, the Gramm-Leach-Bliley Act, requires financial institutions to provide a notice to consumers relative to the use by the financial institution of nonpublic personal information, and in that regard authorizes consumers to direct that the information not be shared with nonaffiliated 3rd parties. The California Financial Information Privacy Act, requires a financial institution, as defined, to provide a specified written form to a consumer relative to the sharing of the consumer's nonpublic personal information and authorizes a consumer to direct that the information not be shared with certain entities. Existing law also establishes standards for the collection, use, and disclosure of information gathered in connection with insurance transactions.

This bill would require a person who has access to information protected under specified privacy laws and who is not subject to any of those laws to treat the information with the same care that would be required of a person who is subject to any of those provisions. The bill would also provide that the person would be civilly liable, as specified. *The bill would require a business subject to certain privacy laws that allows parties outside the United States access to personal information to disclose this fact, under specified conditions.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to do all of the
2 following:

3 (a) Reaffirm the importance of the laws of this state and federal
4 laws protecting the privacy of confidential, personal information.

5 (b) Ensure that confidential information regarding a California
6 resident that is legally protected within California will be
7 protected when it is used by parties located outside the State of
8 California.

9 (c) Ensure that any person located outside the State of
10 California who has access to legally protected confidential
11 information regarding a resident of California and who violates a
12 law governing the confidentiality of that information shall be
13 subject to legal action in the courts of this state for the violation of
14 that law.

15 SEC. 2. Title 1.81.4 (commencing with Section 1798.98) is
16 added to Part 4 of Division 3 of the Civil Code, to read:

17

18 TITLE 1.81.4. PRIVACY GUARANTEES

19

20 1798.98. (a) For purposes of this section, “privacy law”
21 means any of the following:

22 (1) Part 2.6 (commencing with Section 56) of Division 1.

23 (2) Title 1.81.1 (commencing with Section 1798.85).

24 (3) Title 1.82 (commencing with Section 1799).

25 (4) Division 1.2 (commencing with Section 4050) of the
26 Financial Code.



(5) Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

~~(b) The following shall apply to any person who has access to information that is protected pursuant to a privacy law listed in subdivision (a) and who is not subject to any of those provisions:~~

~~(1) That person shall treat that information with the same care that would be required of a party who is subject to any privacy law listed in subdivision (a).~~

~~(2) That person shall be liable in an action for civil damages in the courts of this state brought by a resident of this state, regardless of where the violation occurs, to the same extent as another party who is subject to any privacy law listed in subdivision (a) would be liable for a violation of that provision. For purposes of this paragraph, that person shall be deemed to consent to jurisdiction in the courts of this state.~~

~~(c) If a business is subject to any privacy law listed in subdivision (a), and if any personal information that is processed by that business regarding customers located in this state may be processed by persons who are located outside of the United States, that business shall disclose to customers located in this state that their personal information may be processed by persons located outside of the United States. The business may include that disclosure with any other disclosures the business already provides to those customers. The business shall make that disclosure once to each customer.~~

(b) The following shall apply to any person who has access to information that is protected pursuant to a privacy law listed in subdivision (a) and who is not subject to any of those provisions, provided that the person received protected information as part of a transaction that originated with an entity covered by a privacy law listed in subdivision (a):

(1) That person shall treat the privacy of that information in the same manner that would be required of a party who is subject to any privacy law listed in subdivision (a).

(2) That person shall be liable in an action for civil damages in the courts of this state brought by a resident of this state, regardless of where the violation occurs, to the same extent as another party who is subject to any privacy law listed in subdivision (a) would be liable for a violation of that provision.

1 *For purposes of this paragraph, that person shall be deemed to*
2 *consent to jurisdiction in the courts of this state.*

3 *(c) A business subject to any privacy law listed in subdivision*
4 *(a) that decides to allow any party outside of the United States to*
5 *have access to personal information regarding customers located*
6 *in this state and that is not otherwise authorized by the customers*
7 *to allow that access shall disclose to customers located in this state*
8 *that parties outside of the United States may have access to their*
9 *personal information. The business may include this disclosure*
10 *with any other disclosures the business already provides to*
11 *customers, including disclosures required by the*
12 *Gramm-Leach-Bliley Act or the Health Insurance Portability and*
13 *Accessibility Act. The business need make the disclosure required*
14 *by this section only once to each customer. This disclosure need not*
15 *be made until the next time the business revises its existing*
16 *disclosures or one year from the effective date of the bill enacting*
17 *this section, whichever is earlier.*

18 *(d) The provisions of this section are severable. If any provision*
19 *of this section or its application is held invalid, that invalidity shall*
20 *not affect other provisions or applications that can be given effect*
21 *without the invalid provision or application.*

22 *(e) Nothing in this section shall:*

23 *(1) Modify the application of a privacy law to a person or entity*
24 *that is already subject to that privacy law.*

25 *(2) Prohibit a business from also including in the disclosure*
26 *required by this section a statement that the protections of*
27 *California law will protect the confidentiality of that information*
28 *anywhere it is processed.*